Commonwealth of Virginia
Virginia Information Technologies Agency

SOFTWARE

Optional Use Contract

Date: June 3, 2005

Contract #:   VA-003964-SAS

Authorized User: State Agencies, Institutions, and other Public Bodies
                                         as defined in the VPPA

Contractor: SAS Institute, Inc.
                                         SAS Campus Drive
                                         Cary, NC 27513

Contact: Kerry Swearingen
                                         Phone: 919-531-3553
                                         Email: Kerry.Swearingen@sas.com

FIN: 56-1133017

Delivery Terms: 10 Days ARO

Payment Terms: 30 Days after receipt of order/invoice, whichever later

Payment: Net 30 days

For Additional Information, Please Contact:

Technical Information:
Supply Chain Management
Virginia Information Technologies Agency

Bob Gleason   John Tackley
Phone: 804-371-5923   Phone: 804-371-5930
E-Mail: bob.gleason@vita.virginia.gov   Email: john.tackley@vita.virginia.gov
Fax: 804-371-5969   Fax: 804-371-5969

NOTES: Individual Commonwealth of Virginia employees are not authorized to purchase equipment or
              services for their personal use from this Contract.

              For updates, please visit our Website at http://www.vita.virginia.gov/procurement/contracts.cfm

CONTRACT # VA-003964-SAS
CONTRACT CHANGE LOG

Change No.	Description of Change	Effective Date
1	Deletes duplicate copies of contract	6/3/05

This modification is hereby incorporated into and made an integral part of Contract VA-003964-SAS between the Commonwealth of Virginia and SAS Institute, Inc.

The purpose of this modification is to change the above referenced agreement and create an Enterprise Computing Offer (ECO) for the Commonwealth of Virginia. The parties agree that the following terms and conditions shall govern this continuing offer.

1.   The Enterprise Computing Offer applies to the SAS System for UNIX based processors, Open VMS AXP based processors, OS/2, Windows and Windows NT. Each operating system shall be licensed separately.

2.   The Enterprise Computing Offer basic package includes the following products which are automatically licensed, if available in production versions under the Commonwealth's operating system(s), when "ECO" is designated under Institute Software on the Commonwealth's Delivery Order or Purchase Order, hereinafter referred to as "Orders".

    Base SAS, SAS/AF, SAS/ASSIST, SAS/CALC, SAS/CONNECT, SAS/EIS, SAS/FSP, and SAS/GRAPH software, and SAS/TUTOR: Fundamentals of the SAS System.

3.   Once the Commonwealth has designated ECO under an Order to receive the Enterprise Computing Offer basic package, the Commonwealth may avail itself of additional options, or license additional products, as follows:

    a.   The STAT PLUS Option includes the following four products, if available in production versions under the Commonwealth's operating system(s), SAS/STAT, SAS/IML, SAS/INSIGHT, and SAS/LAB software and may be licensed by designating "STAT/PLUS" under an Order referencing this Agreement.

    b.   The SAS/TUTOR PLUS Option includes all of the additional SAS/TUTOR on-line training products available in production versions under the Commonwealth's operating system(s) and may be licensed by designating "SAS/TUTOR/PLUS" under an Order referencing this Agreement.

    c.   Additional products listed on the then-current Enterprise Computing Offer fee schedule may be licensed individually, if available in production versions under the Commonwealth's operating system(s), by designating the individual product name(s) under an Order referencing this Agreement.

4. The institute may from time to time change the product mix in the Enterprise Computing Offer. If the Institute adds products to those listed in the Enterprise Computing Offer basic package, STAT PLUS Option, of SAS/TUTOR PLUS Option designated by the Commonwealth in an Order, those products will be automatically provided to the Commonwealth and will be identified in a transmittal letter accompanying the media on which the products are shipped. All such added products shall be governed by the terms of this Agreement and any Order referencing this Agreement.

5. If the Institute discontinues inclusion of any option or of any product licensed by the Commonwealth under the Enterprise Computing Offer, the Commonwealth will receive written notice a least ninety (90) days prior to the anniversary date. At renewal, the product authorization code for the discontinued product will not be provided unless the product is licensed separately.

6. No products licensed under the Enterprise Computing Offer shall be used for remote computing services, timesharing, facilities management, or other third party access arrangement, even if contracts authorizing such use for other licensed products are in effect between the Commonwealth and the Institute.

The Commonwealth agrees to the following:

A. The Institute will license and ship the listed software to the Commonwealth upon acceptance by the Institute of each individual Order issued under this Agreement by the Commonwealth. Such Orders may be issued by individual agencies or institutions of the Commonwealth having Delegated Procurement Authority (DPA) from the Department of Information Technology. Contractor is advised that DPA categories are as follows:

Level I	$5,000
Level II	$30,000
Level III	Unlimited

The Institute recognizes that all agencies and institutions of the Commonwealth must comply with the requirements of the Virginia Public Procurement Act (VPPA) prior to issuing an Order to the Institute for software products described herein.

B. The Commonwealth may use the Software only on authorized hardware under this Agreement, unless otherwise provided in the Agreement. Authorized hardware must be owned by or leased by the Commonwealth and located on Commonwealth premises.

C. The Commonwealth shall allow use of the Software only by Commonwealth's employees and any contractors or consultants performing work solely for the Commonwealth. Contractors or consultants shall only access the Software while on Commonwealth's premises.

D. When Commonwealth licenses workstation or personal computer Software under an offer which is based on the number of "total users," the total number of individuals who have access to the Software during the license period must be counted and included in the total user increment under the license.

E. Commonwealth agencies or institutions who order Institute's products shall keep records of where personal computer and workstation Software are located, and will provide that information to the Institute upon reasonable request, not to exceed two individual requests in any one calendar year.

F. The Commonwealth shall not modify the Software except as the Institute specifically authorizes.

G. The Commonwealth shall not mask, modify, or suppress any copyright notice or other proprietary rights notices in the Software.

H. The Commonwealth shall label all authorized copies of the Software wit the copyright and other proprietary rights notices appearing on the original media received from the Institute.

I. The Commonwealth shall not permit anyone having access to the Software to use the Software: (i) outside the USA, (ii) in a timesharing arrangement, (iii) as a rental, (iv) except as specifically permitted in the Agreement and any Orders executed under the Agreement.

J. The Software is copyrighted and unpublished. Title to the Software remains with the Institute at all times. Source Code not supplied with the Software ("Source Code") is an Institute trade secret. The Commonwealth is not authorized to access the Source Code; therefore, the Commonwealth may not reverse assemble, reverse engineer, or decompile the Software or access the Source Code by any means.

K. License fees during renewal periods will be in accordance with the above referenced Contract VA-003964-SAS. The Commonwealth's changes in operating system(s) may result in additional charges effective from the date of the change, which will be in accordance with the Institute's then-current applicable license fee schedule.

Delivery Order / Purchase Orders issued by the Commonwealth of Virginia to the Institute for Software. All Orders shall reference the following: (i) Delivery Address, (ii) Invoice Address, (iii) agency or institute point of contact/phone number, (iv) description of the Software and the designation that this is an "ECO Order", (v) price of the software licenses, (vi) requested delivery date, and (vii) number of users. All Orders will be delivered to the Institute at the following address:

SAS Institute, Inc.
SAS Campus Drive
Cary, NC 27513
Phone (919) 677-8000
Fax (919) 677-8123

Contract VA-003964-SAS and any future Orders referencing this Agreement are the parties complete agreement governing the licensing of the Software under this Agreement. Additional or conflicting terms in either Contractor's or Commonwealth's documents are rejected. With respect to the Software licensed under any Order (accepted by Contractor) may supersede and replace any terms in the Agreement which conflict with or are inconsistent with this Agreement.

All other terms and conditions remain unchanged.

PERSONS SIGNING THIS MODIFICATION ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT.

SAS INSTITUTE, INC.

Signature

Dianne A. Johnson
Director, Contracts Division
SAS Institute Inc.

Title

June 10, 1994

Date DEP/dwc

COMMONWEALTH OF VIRGINIA

Signature

Larry F. Schucht
Name

Contracts Manager
Title

May 27, 1994
Date

SAS Institute Inc.

ADDENDUM
TO
CONTRACT NUMBER   3964

The terms and conditions of the Master License Agreement for Institute Program Products on Microcomputers Contract Number ___3964___ between SAS Institute Inc., hereinafter referred to as Contractor or Institute, and the Commonwealth of Virginia, hereinafter referred to as State or Customer, are hereby revised and incorporated by this Addendum.

3D. License Restrictions.

The first sentence is deleted in its entirey.

5A. Charges.

The last sentence is deleted in its entirety.

7B. Non-disclosure of Proprietary Property.

Delete the phrase "and shall assist the Institute in the prosecution of any parties who are using the MicroIPPs in violation of this Agreement." and replace with the following:

"and shall reasonably assist the Institute in the prosecution of any Parties who are using the MicroIPPs in violation of this Agreement."

7C. Non-disclosure of Proprietary Property.

Delete Paragraph C in its entirety and replace with the following:

"CUSTOMER AGREES THAT ITS OBLIGATIONS OF CONFIDENTIALITY DESCRIBED HERETOFORE IN THIS PARAGRAPH ARE BINDING FOR A PERIOD OF FIVE (5) YEARS BEYOND THE EXPIRATION OF THIS LICENSE AGREEMENT OR THE EXPIRATION OF ANY OTHER LICENSE AGREEMENT BETWEEN THE CUSTOMER AND THE INSTITUTE, WHICHEVER TERM IS LONGER."

8. Patent, Copyright and Trade Secret Indemnification.

Paragraph 8 is deleted in its entirety and replaced with the following:

"8. Patent/Copyright Protection.

Contractor, at its own expense, will defend any suit which may be brought against the State for the infringement of United States patents or copyrights arising from the Contractor's or State's use of any software, materials or information prepared or developed in connection with performance of the contract and in any such suit, Contractor will satisfy any final judgment or award for such infringement subject to 2.1-127 of the Code of Virginia. This is upon the condition that:

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a. The Contractor is notified of the suit within a reasonable time
    after the Commonwealth becomes aware of it; and,

b. The Contractor has the full right and opportunity to conduct the
    defense of any such action. If, however, principles of governmental
    or public law are involved the State may, at its option, participate
    in the defense of any such action; provided the Institute shall have
    the right to accept or reject any settlement involving it.

The Contractor shall not indemnify the Commonwealth against any claim of
infringement arising out of software made or modified to the agency's own
specifications or design, any infringement based on the use of other than
the latest unaltered release of the licensed MicroIPP available from the
Institute if such infringement would have been avoided by the use of the
latest unaltered release of the licensed MicroIPP, or any infringement
that results from the combination of software furnished hereunder with
software not supplied by the Contractor.

If in the Contractor's opinion the software, material or information
furnished hereunder is likely to or does become the subject or claim of
infringements of United States patents or copyrights, then without
diminishing Contractor's obligation to satisfy said final award,
Contractor may, at its option, substitute for the alleged infringing
software, modificiations comparable in performance to the original
licensed software; or at the Contractor's option and expense, obtain the
right for the State to continue the use of such software, or withdraw the
MicroIPP from the market. If the use of such software by the State shall
be prevented by permanent injunction, or Contractor's inability to procure
the right for the State to continue using the software at a reasonable
cost, or software is withdrawn from the market, the Customer or Contractor
may terminate the license agreement as provided for in Sections 2 and 11
of this Agreement and the State shall receive a refund for the current
paid license."

13A. Limitation of Liability.

The first paragraph is modified by adding at the end thereof "subject to
Section 26."

13B. Limitation of Liability.

The first sentence is amended to read as follows:

"...negligence which introduces an error into the MicroIPP or any lost
profits, or for any claim or demand against the Customer by any other
party, except a claim for patent, trade secret or copyright infringement
as provided herein."

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Revised: March 25, 1987

13C. Limitation of Liability.

Delete Paragraph C in its entirety.

13D. Limitation of Liability.

Delete Paragraph D in its entirety and replace with the following:

"NEITHER PARTY SHALL BE RESPONSIBLE FOR SPECIAL, CONSEQUENTIAL OR INDIRECT DAMAGES EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES EXCEPT THAT CUSTOMER SHALL BE RESPONSIBLE FOR DAMAGES RESULTING FROM CUSTOMER'S BREACH OF THE PROVISIONS OF THIS AGREEMENT SET FORTH IN SECTION 4, DISTRIBUTION, SECTION 7, NON-DISCLOSURE OF PROPRIETARY PROPERTY, SECTION 9, RESPONSIBILITIES OF THE PARTIES, AND SECTION 11, DISCONTINUANCE, AND ANY AMENDMENTS THERETO UPON CONDITION SUCH ARE AWARDED BY FINAL ORDER OF A COURT OF COMPETENT JURISDICTION. IN ADDITION, IN ANY ACTION FOR NON-PAYMENT OF CHARGES HEREUNDER, THE INSTITUTE ADVISES THAT IT MAY SEEK ATTORNEY'S FEES."

14A. General.

The first sentence is amended to read as follows:

"The term 'this Agreement' as used herein includes this Addendum and any future written amendments, modifications, or supplements made in accordance herewith."

14B. General.

Replace Paragraph B with the following:

"The Institute shall have the right to terminate this Agreement upon six (6) months' notice to the Customer prior to Customer's anniversary date."

15. Governing Law.

Replace this paragraph as follows:

"This Agreement will be governed by the laws of the United States of America and the Commonwealth of Virginia both as to execution, interpretation and performance."

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16. Controlling Terms.

Paragraph 16 is deleted in its entirety and replaced with the following:

"IN THE EVENT OF ANY CONFLICT BETWEEN THE TERMS AND CONDITIONS OF THE LICENSE AGREEMENT INCLUDING THIS ADDENDUM AND THE TERMS AND CONDITIONS OF ANY PURCHASE ORDER SUBMITTED BY THE CUSTOMER, THE TERMS AND CONDITIONS OF THE LICENSE AGREEMENT INCLUDING THIS ADDENDUM SHALL CONTROL."

18. Integration Clause.

The first paragraph is deleted in its entirety.

The words in the second and third lines of the second paragraph are amended to read as follows:

"AGREEMENT, INCLUDING THIS ADDENDUM, UNDERSTANDS IT, AND AGREES TO BE BOUND BY"

The words in line 11 of paragraph 2 which reads "UNLESS OTHERWISE PROVIDED HEREIN" are deleted.

The following statement is added as the last paragraph herein:

"THIS ADDENDUM IS HEREBY ATTACHED AND INCORPORATED."

The following paragraphs are added and incorporated:

"19. Taxes - Federal, State and Local.

The Commonwealth of Virginia is exempt from Federal excise and all State and Local taxes; such taxes shall not be included in Contract prices. Tax exemption certificates will be furnished if requested by the Contractor."

"20. Non-Appropriation.

All funds for payments after June 30th of the current fiscal year are subject to the availability of a legislative appropriation for this purpose. Payments during subsequent fiscal periods are dependent upon the same action. In the event of non-appropriation of funds by the Legislature for the items under this contract, the Commonwealth will terminate this contract on June 30th of the then current fiscal year. Written notice will be provided to the Contractor as soon as possible after legislative action is completed.

In the event funding for the payment of invoices is subject to the availability of Federal funding, and such Federal funding is not made available, this Contract may be terminated effective the date of non-availability of funds for those items dependent on Federal funds only."

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"21. Non-Assignment.

"Neither party shall assign or otherwise transfer its rights, duties and/ or obligations under this Contract, except with the prior written consent of the other party, which consent shall not be unreasonably withheld; any assignment or transfer without such consent shall be null and void. The State, however, shall at all times be entitled to assign or transfer its rights, duties and/or obligations under this Contract to another agency of the Commonwealth of Virginia, upon giving fifteen (15) days written notice to Contractor."

"22. Amendments.

No amendment to this Contract shall be effective unless it is in writing and signed by the duly authorized representatives of both parties. No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent to breach is in writing. For purposes of the Contract, the only authorized representatives shall be:

Commonwealth of Virginia	SAS Institute Inc.
Contracts Manager	Manager, Contracts Administration
Department of Information Technology	SAS Circle
110 South 7th Street/Lobby Floor	P. O. Box 8000
Richmond, VA 23219	Cary, North Carolina 27511

"23. Contract Orders.

Delivery Orders and/or Purchase Orders for Contractor supplied software, maintenance or other services may be attached to this Contract. In the absence of any specific provisions to the contrary, it is hereby stipulated and agreed that the terms and conditions of this Contract will have priority in the resolution of contractual matters."

"24. Certifications.

Contractor hereby certifies its compliance with the following:

A. Comprehensive Conflict of Interest Act.
B. Virginia Freedom of Information Act.
C. Virginia Fair Employment Contracting Act.
D. Virginia Governmental Frauds Act.
E. Virginia Public Procurement Act.

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"25. Contractual Records.

Copies of contractual books, records and other documents related to payments by the Customer under this Contract shall be made available by Contractor to the State and its designated agents for a period of five (5) years after final payment for purposes of audit and examination."

"26. Liability.

In the event the Contractor performs any services to State under this Agreement on State's premises, Contractor shall maintain such personal injury and property damage liability insurance as necessary to protect itself from claims arising out of the performance of this Contract. Contractor shall indemnify and hold harmless the State, its agencies, employees and designated representatives from any and all claims, suits, actions, liabilities and costs of any kind caused by the performance by the Contractor of its work under this Contract. Nothing contained herein shall be deemed as an expressed or implied waiver of the sovereign immunity of the State, or a pledge of the full faith and credit of the State."

"27. Contingent Fee Warranty.

The Contractor warrants that he/it has not employed or retained any person or persons, except Contractor's regular full-time employees, for the purpose of soliciting or securing this agreement. The Contractor further warrants that he/it has not paid or agreed to pay any company or person any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon the award or making of this Agreement. For breach of one or both of the foregoing warranties, the State shall have the right to terminate this agreement without liability, or, in its discretion, to deduct from the agreed fee, payment or consideration, or otherwise recover, the full amount of said prohibited fee, commission, percentage, brokerage fee, gift, or contingent fee."

"28. Virginia Public Procurement Act.

Employment discrimination by Contractor is prohibited during the performance of this Contract and the Contractor agrees as follows:

a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forthe the provisions of this nondiscrimination clause.

b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.

c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

d. The Contractor will include the provisions of the foregoing paragraphs a, b and c in every subcontract or purchase order of over $10,000, so that the provisions will be binding upon each subcontractor or vendor."

"29. State Rights to Computer Software.

a. The State's rights in computer software developed at private expense and provided hereunder by the Contractor may be restricted by the Contractor. As a minimum, however, the State shall have:

(1) Unlimited use of such software on computer systems for which or with which it is acquired provided, however, that the State complies with the terms and conditions of this Agreement and Addendum and that the authorized number of "single user workstations" is not exceeded.

(2) Use of such software with a backup system if the System for which or with which it was acquired is inoperative because of a malfunction, or during an emergency, or the performance of engineering changes until the system is restored to normal operation.

(3) The right to use such software with designated computer at any State installation to which the designated computer may be transferred by the State;

b. Notwithstanding any of the provisions contained in the parties agreement, the State will have the right to use any information that is now generally known to the public or to use any information from and after the time it becomes so known, provided that such information does not or has not become so known through disclosure by the State or by any other person or entity in breach of obligations owed to the Institute."

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"30. Contractual Claims.

Contractual claims arising under this agreement are subject to the
Virginia Public Procurement Act."

"31. General.

In the event of any conflicts between the terms and conditions of this
addendum and the terms and conditions of the Master License Agreement
for Institute Program Products on Microcomputers, the terms and
conditions of this addendum shall prevail."

PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES
OF EACH PARTY TO THIS CONTRACT, AND ACKNOWLEDGE THAT EACH PARTY
AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT.

SAS Institute Inc.   Commonwealth of Virginia

By _____   By _____
      (authorized signature)   (authorized signature)

Dianne A. Johnson   Larry F. Schucht
      Name (type or print)   Name (type or print)

Manager, Contracts Administration   Contracts Manager
      Title   Title

On   March 26, 1987   On   June 29, 1987
      Date   Date

Revised: March 25, 1987

SAS Institute Inc.

∫∆∫® Master License Agreement
for Institute Program Products on Microcomputers

This Master Agreement (hereinafter "Agreement") is made by and between SAS Institute Inc., SAS Circle, P. O. Box 8000, Cary, North Carolina 27511 ("Institute")

and ___Commonwealth of Virginia – Dept. of Health___

___James Madison Building – Room 309, 109 Governor Street___

___Richmond, Virginia   23219___ _____ ("Customer")

1. **Subject of Agreement.** The Institute agrees to grant, and the Customer agrees to accept, under the following terms and conditions nontransferable, nonexclusive licenses to use the Institute Program Products on Microcomputers ("MicroIPPs") listed in any executed Supplement to this Agreement. Customer's rights hereunder are those of a licensed user only. MicroIPPs shall at all times remain the property of the Institute.

Definitions:

2. **Term.** MicroIPP licenses shall be in effect for a period of one (1) year, except for prorated licenses as defined in paragraph 3, and shall be automatically renewable for additional one year periods. All terms and conditions of this Agreement except the "license beginning date" as defined in paragraph 3 are deemed to be in effect on the date on which it is accepted by the Institute at its office in Cary, North Carolina, and shall remain in full force unless terminated as provided herein. The Customer may terminate this Agreement on thirty (30) days' prior written notice to the Institute once it has discontinued use of all MicroIPPs and has given notice of such discontinuance in accordance with paragraph 11, provided that the Customer is not in breach of any provisions of this Agreement. The Institute may discontinue any MicroIPP license or terminate this Agreement if the Customer fails to comply with any of its terms and conditions.

3. **License.**

   A. **MicroIPP License:** MicroIPP licenses granted under this Agreement authorize the Customer to use the MicroIPPs at a specified number of single user workstations located within the United States and Canada as set forth in Supplements to this Agreement. A "single user workstation" shall be defined to include any device from which the MicroIPPs may be used or accessed. Where networks of Intelligent and Nonintelligent terminals are used each such Intelligent or Nonintelligent terminal shall be counted as a separate single user workstation.

   B. **License Period:** The initial MicroIPP license shall be in effect for a period of one (1) year from the "license beginning date" specified by the Institute in the Supplement for that MicroIPP. The Institute will establish a "license beginning date" approximately forty-five (45) days after the date the Institute exe-

cutes this License Agreement and/or any new MicroIPP Supplements hereto. The forty-five (45) day period is granted to allow time for delivery, installation and Customer trial. A forty-five (45) day period is not provided for additional copies of currently licensed MicroIPPs.

The MicroIPP license "anniversary date" shall be one (1) year from the initial "license beginning date." All new, additional and interim MicroIPP licenses shall be prorated so that billing dates for all licensed MicroIPPs will fall on the same date which will be the "anniversary date" of the initial MicroIPP license. All license fees shall be prorated accordingly.

   C. **Trial Period:** During the trial period, Customer may return licensed MicroIPPs to Institute with Customer's notice of rejection. If written notice of rejection is not received by Institute prior to "license beginning date" then MicroIPPs are deemed accepted by Customer.

   D. **License Restrictions:** 1) ~~Nonassignment: This Agreement and any Supplements thereto may not be assigned, sublicensed, or otherwise transferred by the Customer without the prior written consent of the Institute.~~ 2) Equipment: MicroIPPs may only be used or accessed on Customer owned or leased equipment. 3) End-User: MicroIPPs may be used or accessed only by Customer's employees and in the case of degree-granting institutions by registered students. 4) Unauthorized Use: Customer may not make the licensed MicroIPPs available on a time-sharing, rental or any other basis not specifically authorized by this Agreement. Any violation of this section must be immediately reported to Institute.

4. **Distribution:**

   A. **Institute Distribution:** Institute will, at its option, supply either one (1) set of master diskettes or one (1) copy of the MicroIPPs on tape. Customer may distribute or download MicroIPPs to Customer owned/leased single user workstations for use solely within the United States of America and Canada unless otherwise provided for in writing.

   B. **Copyright Notices:** Each copy residing on a transportable medium shall bear the identical copyright notice and any other proprietary notice set forth on the original MicroIPPs. Labels shall be provided by Institute for this purpose.

Each copy shall also contain the internal institute copyright notice and any other proprietary notices contained in the original MicroIPPs. These notices shall be in human-readable form when viewed by the "End-User" on the screen.

C. **Offsite Reproduction:** Reproduction by anyone other than Customer shall be permitted only with the prior written consent of the Institute. Customer shall be responsible for assuring that Institute's proprietary rights are not violated.

D. **Single User Workstation List:** Customer, through its SAS Software Installation Representative, shall maintain a list indicating the physical location of each single user workstation used to access the MicroIPPs. Said list is subject to Institute review on five (5) days' notice during normal working hours.

E. **Employee Terminations:** Upon the termination of employment by any employee of Customer, Customer is obligated to take possession of any copy of the MicroIPPs in the possession of said terminating employee.

F. **Employee Home Use of MicroIPPs:** Customer may permit home use of MicroIPPs if prior to any employee removing MicroIPPs from Customer's premises, (1) employee signs a statement acknowledging that MicroIPPs are copyrighted, proprietary work belonging to Institute, (2) further agrees that employee will not copy or permit copying or access to MicroIPPs by anyone, and (3) employee agrees to return MicroIPPs if no longer employee of Customer or if Customer discontinues MicroIPPs license. Section 3 D(2) above shall not apply to employee home use. Any such home use shall not count as a "single user workstation" under section 3A of this agreement. However, the total number of "single user workstations" per product used by employees at home cannot exceed the total number of "single user workstations" per product licensed under this agreement.

5. **Charges:**

A. Initial year license fees are due within thirty (30) days after the "license beginning date." MicroIPPs yearly license and renewal fees are subject to change by Institute upon three (3) months' written notice. To any charges under this Agreement there shall be added amounts equal to any federal, state, or local taxes, new or hereafter levied with respect to the charges set forth herein, which the Institute has the legal obligation to collect and/or pay, exclusive of personal property taxes assessed on the licensed MicroIPPs and taxes based on net income.

B. Approximately one (1) month before the MicroIPP yearly anniversary date, the Institute will invoice Customer for the next year's license fee. Customer's payment of the invoice within thirty (30) days will signify its renewal of the MicroIPPs license for one (1) year. Failure to pay the invoice within thirty (30) days after the anniversary date shall constitute non-renewal of the license. Customer must immediately discontinue use of the MicroIPPs and notify the Institute of its discontinuance as provided in Paragraph 11 herein.

C. (1) Annual Single User Workstation Inventory: It is Customer's responsibility at least thirty (30) days prior to the yearly anniversary date to report increases in the number of single user workstations which use or access MicroIPPs, including projected additional single user workstations for the renewal period. Institute shall send Customer "Renewal Notice" sixty (60) days prior to yearly anniversary date.

(2) **Interim Increases of Single User Workstations:** Customer shall have the right to increase the number of single user workstations which use or access MicroIPPs beyond the currently licensed number without violating this Agreement if within thirty (30) days of such increased use, Customer notifies Institute in writing of the date, and amount of increased use, pays the interim Institute invoice within thirty (30) days of Customer's receipt of said invoice and executes the necessary Supplement to this Agreement. Licenses will be granted in increments as set forth in the then current Institute MicroIPP fee schedule.

6. **Customer Service.**

A. Customer shall designate one (1) SAS Software Installation Representative and one (1) SAS Software Consultant, who shall act as liaison between the "End-User" and Institute to obtain support as set forth below.

B. The Institute will offer limited consultation, via telephone or writing, on specific problems that arise in the installation and use of licensed MicroIPPs {including consultation to correct MicroIPP errors or to offer suggestions as to their circumvention}. Institute shall be required to provide support for any prior release for a period of three (3) months after Customer receipt of the current release. In addition, program corrections may be sent to the Customer to modify or correct existing errors in the MicroIPPs.

HOWEVER, THE INSTITUTE NEITHER GUARANTEES CONSULTATION RESULTS NOR REPRESENTS OR WARRANTS THAT ALL ERRORS OR BUGS WILL BE CORRECTED.

7. **Non-disclosure of Proprietary Property.**

A. The MicroIPPs are an Institute proprietary development and constitute a valuable work product in the form of trade secrets, know-how, copyrighted and confidential information. Customer will use all reasonable efforts to limit access to the MicroIPPs to its employees, and will ensure that such employees will respect and acknowledge the trade secrets, know-how, copyrighted and confidential information contained in the MicroIPPs.

CUSTOMER FURTHER AGREES THAT IT WILL NOT REVERSE ENGINEER OR DECOMPILE THE MICROIPPS.

B. Should any portion of the MicroIPPs be compromised, Customer will immediately notify the Institute of the circumstances surrounding such compromise and shall assist the Institute in the prosecution of any parties who are using the MicroIPPs in violation of this Agreement.

8. Patent, Copyright and Trade Secret Indemnification.

9. Responsibilities of the Parties.

A. Institute: From time to time during the existence of this Agreement, the Institute will furnish updated copies of the licensed MicroIPPs to the Customer.

B. Customer: Customer shall be exclusively responsible for the supervision, management, and control of its use of the licensed MicroIPPs, including but not limited to: (1) assuring proper machine configuration and MicroIPPs installation, (2) establishing adequate backup plans, and (3) implementing sufficient procedures to satisfy its requirements for security and accuracy of input and output as well as restart and recovery in the event of a malfunction, (4) maintaining accurate records of employee use of Institute MicroIPPs as required in Paragraph 4, and (5) notifying Institute in writing of the name and location of its SAS Software Installation Representative, its SAS Software Consultant, and its SAS Training Coordinator.

10. Order and Delivery.

Orders for particular MicroIPP licenses should be made in writing by executing Supplements (sample attached) to this Agreement. When possible, licensed MicroIPPs will be shipped to Customer within ten (10) business days after the Institute executes this Agreement and Supplement(s). However, the Institute does not represent or warrant that such shipment dates will be met.

Complete installation instructions are provided with the MicroIPPs. If any licensed MicroIPPs are lost or damaged during shipment, the Institute will replace the MicroIPPs at no additional charge to Customer.

11. Discontinuance.

Within one (1) month after the date of discontinuance of any MicroIPP licenses under this Agreement, the Customer will:

(1) Certify in writing that through its best efforts, and to the best of its knowledge, the original and all copies on tape, diskette, hard disk or other medium, in whole or in part, in any form, including partial copies and modifications, of the licensed MicroIPPs received from the Institute or made in connection with such license have been destroyed, except that upon prior written authorization from the Institute, the Customer may retain a copy for archive purposes.

(2) Notify all employees that MicroIPP licenses have been terminated and further use is prohibited.

(3) Forward a copy of the current list containing location of each single user workstation used to access the MicroIPPs pursuant to Paragraph 4(d).

12. Warranty.

The Institute warrants that the licensed MicroIPPs will conform to published specifications, if any, when shipped to the Customer. Sample data will be shipped with the licensed MicroIPPs to assure that the Customer has received a valid copy. IT IS CUSTOMER'S RESPONSIBILITY TO DETERMINE MACHINE COMPATIBILITY WHEN USING NON-IBM HARDWARE. CONTINUED OR FUTURE COMPATIBILITY WITH NON-IBM HARDWARE IS NOT GUARANTEED.

THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

13. Limitation of Liability.

A. The Customer agrees that the Institute's liability hereunder for damages, excluding liability for copyright, trade secret or patent infringements, regardless of the form of action, shall not exceed the most recent yearly charges paid by the Customer for the particular licensed MicroIPPs involved.

B. The Customer further agrees that the Institute will not be liable for negligence or any lost profits, or for any claim or demand against the Customer by

any other party, except a claim for patent, trade secret or copyright infringement as provided herein.

C. ~~No action regardless of form, arising out of the transactions under this Agreement may be brought by either party more than one (1) year after the cause of action has accrued, except that an action for nonpayment or infringement of proprietary rights may be brought at any time as permitted by law.~~

D. ~~IN NO EVENT WILL THE INSTITUTE BE LIABLE FOR CONSEQUENTIAL DAMAGES EVEN IF THE INSTITUTE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.~~

14. General.

A. The term "Agreement" as used herein includes any future written amendments, modifications, or supplements made in accordance herewith. The Customer agrees that its acceptance of future delivery of any licensed MicroIPPs from the Institute is conclusive evidence of its agreement that the license for such MicroIPPs is governed by the terms of this Agreement.

B. ~~The terms of this Agreement may be modified by the Institute upon six (6) months' written notice to the Customer, except for the terms and conditions which relate specifically to: (1) discontinuance of this Agreement or licenses granted under this Agreement as provided in the section of this Agreement entitled "Term," and (2) charges for licenses granted under this Agreement as provided in the section of this Agreement entitled "Charges."~~

15. Governing Law.

This Agreement will be governed by the laws of the United States of America and the ~~State of North Carolina~~ both as to interpretation and performance.

16. Controlling Terms.

~~IN THE EVENT OF ANY CONFLICT BETWEEN THE TERMS AND CONDITIONS OF THE LICENSE AGREEMENT AND THE TERMS AND CONDITIONS OF ANY PURCHASE ORDER OR OTHER INSTRUMENT SUBMITTED BY THE CUSTOMER, THE TERMS AND CONDITIONS OF THE LICENSE AGREEMENT SHALL CONTROL.~~

17. Unconscionability Clause.

It is expressly agreed and understood by the parties hereto that if any provision of this Agreement is held to be unconscionable or invalid under any applicable statute or rule of law, it is deemed to that extent to be omitted. However, the balance of the Agreement shall remain in full force and effect.

18. Integration Clause:

~~THE CUSTOMER'S REMEDIES IN THIS AGREEMENT ARE EXCLUSIVE.~~

THE CUSTOMER ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS, AND FURTHER, AGREES THAT IT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN THE PARTIES, WHICH SUPERSEDES ALL PROPOSALS, ORAL OR WRITTEN, AND ALL OTHER COMMUNICATIONS BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT. THIS AGREEMENT, ~~UNLESS OTHERWISE PROVIDED HEREIN,~~ CAN ONLY BE MODIFIED IN WRITING, SIGNED BY BOTH CUSTOMER AND INSTITUTE.

The Addendum to this License Agreement is attached hereto and made a part hereof.

Accepted by:

SAS Institute Inc.

By _____
Authorized signature

Dianne A. Johnson
Name (type or print)

Manager, Contracts Administration
Title

Date March 26, 1987

Customer The Commonwealth of Virginia

By _____
Authorized signature

Larry F. Schucht
Name (type or print)

Contracts Manager
Title

Date June 29, 1987